



September 7, 1999

Ms. Susanna Holt  
Assistant Attorney General  
Executive Administration  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR99-2485

Dear Ms. Holt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127365.

The Office of the Attorney General (the "OAG") received a request for information related to the preparation of Attorney General Opinion JC-0059. You relate that you have released documents in response to this request but seek to withhold certain information, contending that it is excepted from public disclosure by sections 552.103, 552.107(1) and 552.111 of the Government Code. You have submitted to this office for review the information that you seek to withhold. We assume that the responsive information not submitted for our review has been released. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). You contend that the subject information relates to the case *Eliza May v. Texas Funeral Service Commission*, No. 99-03487 (261<sup>st</sup> Dist. Ct. Travis

County, Tex. March 23, 1999). However, we note that neither the Office of the Attorney General, nor any officer or employee of that agency, is a party to this suit. Although you imply that the current Attorney General may be made a party to this litigation, we do not believe that you have demonstrated reasonably anticipated or pending litigation in which the Office of the Attorney General, or any employee thereof, may be a party. *See* Open Records Decision No. 452 at 4 (1986) (more than “mere conjecture” required to invoke the litigation exception). Therefore, the subject information may not be withheld under section 552.103(a) of the Government Code.

Section 552.107(1) excepts information from disclosure if it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct. This exception does not apply to all client information held by a governmental body’s attorney; rather, it excepts from public disclosure only “privileged information,” *i.e.* communications made to the attorney in confidence and in furtherance of rendering professional services or that reveal the attorney’s legal opinion or advice. Open Records Decision Nos. 589 at 1(1991), 574 at 3 (1990), 462 at 9-11(1987).

Section 552.107 may except from disclosure notes in an attorney’s file if they contain confidences of the client or reveal the opinions, advice, or recommendations that have been made or will be made to the client or associated attorneys. Open Records Decision No. 574 at 6 (1990). We are of the opinion that communications between attorneys of the various divisions of the Office of the Attorney General, including the Attorney General, when related to those attorneys’ requests for or rendition of legal advice, necessarily reveal opinion, advice or recommendations of those attorneys that have or will be made to the client or associated attorneys. Further, communications to the Attorney General, which request an opinion that the Attorney General is authorized to issue, constitute a privileged attorney-client communication. Therefore, the subject communications may be withheld under section 552.107(1) of the Government Code. Since section 552.111 generally protects only advice, opinion, and recommendations, any protection under section 552.111 will usually be no greater or less than the protection offered under section 552.107. *See* Open Records Decision No. 574 at 2 (1990). Therefore, we do not address section 552.111 separately in this opinion. We note that you have included documents which have been filed with the court. Such documents are usually public and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). You have also included file items that appear to be administrative documents (tracking sheet, search results, file routing documents). We do not believe that an exception to disclosure applies to this information; consequently, it must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 127365

Encl. Submitted documents

cc: Ms. Denise Gamino  
Austin American-Statesman  
P.O. Box 670  
Austin, Texas 78767  
(w/o enclosures)